

REMARKS

Applicants have reviewed the application file and have the following preliminary remarks.

Applicants request that the official records of the Patent and Trademark Office be corrected to indicate that this divisional application was filed on December 4, 2001. Additionally, Applicants ask that the records reflect that one of the applications from which the pending application claims priority, U.S. Serial No. 08/033,066, filed March 10, 1993, is abandoned. Applicants filed a Request for Corrected Filing Receipt (*copy enclosed*) on March 22, 2002, but the corrected filing receipt has not been received, and the incorrect filing date on the Official Action suggests that the corrections have not been made.

Also, this application was filed having eight (8) claims, which are set form as filed and as herein amended above, pursuant to 37 C.F.R. §1.121. Applicants note that the filing receipt reflects the correct number of claims. However, in response to the Notice to File Corrected Application Papers, Applicants' representative inadvertently submitted previously-filed claims, rather than copies (corrected for informalities) of the claims as originally filed in this application. Applicants have endeavored to address the Examiner's grounds of rejection based on the incorrectly-submitted claims, insofar as the purported deficiencies noted therein are also present in the claims as originally filed in this application. Applicants respectfully request the Examiner to reconsider the claims as currently amended and as originally filed, as properly recognized herein.

Applicants acknowledge that the formal drawings submitted on March 29, 2002 are deemed acceptable, and that their claim for domestic priority pursuant to 35 U.S.C. §120 has been acknowledged.

1. The claims do not violate the statutory double-patenting ban.

The claims as filed are patentably-distinct from and do not constitute statutory double patenting over the claims of co-owned U.S. Patent No. 6,326,488. Applicants respectfully contend that while the inadvertently-submitted claims may be unpatentable under 35 U.S.C. §101, the claims originally filed are directed to synthetic peptides that are patentably distinct from synthetic oligonucleotides. Applicants thus request that the Examiner withdraw this ground of rejection.

2. The claims are not unpatentable for obviousness-type double patenting.

The claims as filed are patentably-distinct under the judicially-created doctrine of obviousness-type double patenting over the claims of co-owned U.S. Patent Nos. 5,665,550, 6,083,746 or 6,326,488. Applicants respectfully contend that while the inadvertently-submitted claims may be unpatentable over these patents, the claims originally filed are directed to synthetic peptides that are patentably distinct from synthetic oligonucleotides. Applicants thus request that the Examiner withdraw this ground of rejection.

3. The amended claims fulfill the requirements of 35 U.S.C. §112.

Claims 5-7 have been amended to delete the limitation "wherein the GSE comprises a portion of a gene otherwise not recognized as being responsible for said selectable phenotype." This limitation found in claims 8 and 9 of the inadvertently-submitted claims is also found in claims 5-7 of the originally-filed claims. Applicants respectfully submit that these amendments overcome any ground of rejection based on the objected-to limitation, and request the Examiner withdraw the rejection therefore.

The bases of rejecting claims 5 and 6 of the inadvertently-submitted claims are not found in the claims originally-filed in this application, and Applicants thus ask the Examiner to withdraw this ground of rejection.

Applicants believing that all grounds of rejection under 35 U.S.C. §112 have been overcome by amendment, withdrawal of these rejections is hereby respectfully solicited.

CONCLUSION

Applicant believes that all requirements of patentability have been fully met, and allowance of the claims is respectfully solicited.

If the Examiner in charge of this application believes it to be helpful, he is invited to contact the undersigned attorney by telephone at (312) 913-0001.

Respectfully submitted,
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By:

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